

## AGENDA MEMO

PLANNING COMMISSION MEETING DATE: APRIL 23, 2009

DEPARTMENT: PLANNING AND DEVELOPMENT

ITEM DESCRIPTION: ABEYANCE - TXT-33703 - APPLICANT/OWNER: CITY OF LAS VEGAS

### \*\* CONDITIONS \*\*

**STAFF RECOMMENDATION:** APPROVAL.

- Title 19.04.010 is hereby amended as follows:

#### 19.04.010 LAND USE TABLES

**Table 2 – Land Use Table  
Utilities, Communications & Transportation**

USE	RESIDENTIAL												COMMERCIAL						INDUSTRIAL		
Small Wind Energy System (Ord. 5934 – 09/19/07)	U	R-A	R-E	R-D	R-1	R-CL	R-2	R-3	R-4	R-5	R-MH	R-MHP	P-R	N-S	O	C-D	C-1	C-2	C-PB	C-M	M
		C	C	C	C								C		C		C	C	C	C	C
<b>Description:</b> A wind energy conversion system consisting of a wind turbine, a tower and associated control or conversion electronics, which has a rated capacity of not more than 100kW and which is intended primarily to reduce on-site consumption of utility power. The use is not to be deemed an accessory structure.																					
<b>Conditional Use Regulations:</b> <del>*1. The minimum parcel size shall be two acres (net).</del> <del>2. No small wind energy system is eligible for approval if all or part of the property is within a conservation easement or scenic highway corridor, or is listed on the State or National Registers of Historic Places, unless the applicant submits satisfactory evidence that the addition of a small wind energy system is not a violation of the rules that govern the development of the property.</del> <del>3.2. The tower height (meaning the height above grade of the fixed portion of the tower, excluding the wind turbine itself) may not exceed the lesser of the following:</del> <del>a. The maximum height recommended by the manufacturer or distributor of the system, as demonstrated by evidence included with the application; or</del> <del>b. A height of 90 50 feet for a parcel less than 2 net acres in size, zoned R-D, R-1, or P-R; a height of 65 feet for a parcel zoned R-A or R-E; or a height of 140 90 feet on a parcel of 5 net acres or more in size zoned O, C-1, C-2, C-PB, C-M, or M.</del> <del>4.3. In the R-D Zoning District, the entire system must be set back at least 30 feet from the front property line and at least 10 feet from the side and rear property lines. In the R-A and R-E Zoning Districts, the entire system must be set back at least 50 feet from the front and side property lines, and at least 10 feet from the rear property line. The entire system must be set back a minimum of 0.9 times the tower height from all property lines. Further, the entire system must be set back a minimum of 1.0 times the tower height from any occupied structure on an adjacent property.</del> <del>5.4. No part of a system, including guy wire anchors, may be closer to any structure residential building or outbuilding than the sum of the following distances: the length of the tower, plus half the length of the blade diameter, plus an additional 10 feet.</del> <del>6.*5. A system shall not exceed 60dBA, as measured by a sound level meter at the closest neighboring inhabited dwelling. However, this level may be exceeded during short term events such as utility outages or severe severe windstorms.</del> <del>7.*6. The applicant must submit proof of turbine certification approved under the Emerging Technologies program of the California Energy Commission or any other small wind certification program recognized by the American Wind Energy Association.</del> <del>8.*7. A system must comply with applicable FAA regulations, including any necessary approvals for installations close to airports. Necessary approvals must be received prior to submittal to city for a building permit. For locations within the Airport Overlay District, the system must comply with all regulations and requirements applicable to that district.</del> <del>9.*8. A system must comply with all applicable fire codes and building codes.</del> <del>10.*9. A building permit application for a system must be accompanied by:</del> <del>a. Standard drawings of the wind turbine structure including base, tower and footings;</del>																					

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<p>b. An engineering analysis of the tower showing compliance with the International Building Code and certified by a licensed professional engineer; and</p> <p>c. A line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code.</p> <p><del>11 10. Before the installation of a system, the applicant must provide satisfactory evidence that the electrical utility provider has been informed of the applicant's intent to install a system. An off-grid system shall be exempt from this requirement if the property is not served by an electrical utility provider. No co-location of any use defined in this Chapter shall be permitted on a small wind energy system tower.</del></p> <p><del>12 *11. No system shall be erected or moved onto any lot prior to construction of the main building unless a building permit has been issued for the construction of the main building.</del></p> <p><del>13 12. The Special Use Permit provision of Section 19.04.040(B) do not apply to this use. Signage, including flags, streamers and decorative items, both temporary and permanent, are prohibited on the small wind energy system, except for manufacturer identification or appropriate warning signs.</del></p> <p><b>On-site Parking Requirement:</b> No additional parking required beyond that which is required for the principal use(s) on the site.</p>
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2. Title 19.08.060 (B) (3) is hereby amended as follows:

3. Exceptions.

- (a) The following structures may project a maximum of twelve feet above the Proximity Slope:
  - (i) Chimney and vent stacks.
  - (ii) Roof structures for the use of Solar Panels units, elevators, stairs, tanks, ventilation, and similar necessary mechanical equipment.
  - (iii) Visual screens which surround mounted mechanical equipment.
  - (iv) Skylights.
  - (v) Whip and mounted antennas.
- (b) Church steeples, utility transmission lines and towers, wireless communication facilities when attached to a utility transmission line pole or tower, small wind energy systems and municipal utility facilities such as water towers are exempt from the maximum height provisions.

**\*\* STAFF REPORT \*\***

**APPLICATION REQUEST**

This is a request to amend the Small Wind Energy System use entry in Table 2 of Title 19.04 to make corrections and provide provisions for the use in appropriate non-residential districts. The request will also exempt the use from the Residential Adjacency provisions of Title 19.08.060.

**BACKGROUND INFORMATION**

<b><i>Related Relevant City Actions by P&amp;D, Fire, Bldg., etc.</i></b>	
06/14/05	Assembly Bill 236 was signed into law. This bill prohibits municipal governments from prohibiting in their zoning code or subdivision ordinance "Systems which use solar or wind energy to reduce the costs of energy for a structure if such systems and structures are otherwise in compliance with applicable building codes and zoning ordinances, including those relating to the design, location and soundness of such systems and structures, to the extent the local climate allows for the use of such materials, technologies, resources and systems." [NRS 278.580 (4)(b)].
01/17/07	The City Council adopted Ordinance 5885, which was introduced as Bill No. 2006-97, to conditionally permit the Small Wind Energy System use in the R-A (Ranch Acres), R-E (Rural Estates), and R-D (Single Family Residential-Restricted) zoning districts. The Planning Commission and staff recommended approval of this Text Amendment (TXT-13719).
03/26/09	The Planning Commission held this item in abeyance to allow staff to research, and where possible integrate, comment from the public hearing.

**ANALYSIS**

Title 19 had previously been amended to comply with the 2005 amendment to NRS 278.580. This change to the Nevada Revised Statutes required that Title 19 delineate how small wind energy systems would be implemented in the city. The zoning code amendment proposed here further clarifies the Small Wind Energy System conditional use regulations and increases the number of districts where the use is deemed appropriate. This is intended to encourage the use of wind-based energy generation as an ancillary use to the principle activity performed on-site in the R-A (Ranch Acres), R-E (Rural Estates), R-D (Single Family Residential-Restricted), R-1 (Single Family Residential), P-R (Professional Office and Parking), O (Office), C-1 (Limited

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Commercial), C-2 (General Commercial), C-PB (Planned Business Park), C-M (Commercial/Industrial), and M (Industrial) zoning districts. Provided the conditional use regulations are met, the addition of a small wind energy generating system to a site may be approved as a part of the building permit process and will not require additional planning related approvals, public hearings, or interfere with established building height limitations.

Previously, there were provisions for small wind energy generating systems only within the R-A (Ranch Acres), R-E (Rural Estates), and R-D (Single Family Residential-Restricted) zoning districts. This amendment requires reasonable setbacks of 0.9 times the tower height to the property lines and 1.0 times the tower height to an occupied structure on an adjacent property in an effort to ensure that the tower structure, supports, guy wires and turbines do not encroach into the required setbacks. Restrictions are also included to ensure that the distance to the nearest on-site structure is at least 10 feet.

This amendment continues to further the objectives and policies of the Conservation Element of the Las Vegas Master Plan 2020 by addressing the implementation actions that call for the promotion and use of alternative sources of energy (EC.6). Wind energy is an abundant, renewable, and nonpolluting energy resource and its conversion to electricity reduces our local dependence on nonrenewable energy resources and decreases air and water pollution that results from the use and production of conventional energy sources. The expansion of the districts where small wind energy systems are conditionally permitted helps to promote the use of this alternative source of energy.

In expanding the districts where this use is conditionally permitted, the setbacks for all districts have been standardized and are in keeping with standards discussed in the available literature and proposed under a number of model ordinances from various advocacy organizations, federal agencies and state and local government jurisdictions.

These changes to the Small Wind Energy System use will clarify the appropriate zoning districts for such systems and the basic standards to which such systems must comply. The recommendations are generally consistent with the standards endorsed by the American Wind Energy Association (AWEA) for Small Wind Energy Systems.

## **FINDINGS**

The proposed text amendment will accomplish the following:

- Increase the applicable zoning districts where small wind energy systems can conditionally be permitted to include the R-1 (Single Family Residential), P-R (Professional Office and Parking), O (Office), C-1 (Limited Commercial), C-2 (General Commercial), C-PB (Planned Business Park), C-M (Commercial/Industrial), and M (Industrial) zoning districts.

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- Standardize the setback requirements across all applicable zoning districts.
- Maintain requirements for the submission of proof of compliance with International Building Code, National Electrical Code, necessary approvals from the Federal Aviation Administration and/or the Clark County Department of Aviation, and system certification approved by the American Wind Energy Association.
- Remove requirements for the submittal of notification to the utility provider.
- Ensure that the use does not become visually intrusive or become a commercial enterprise by limiting signage to the manufactures label and necessary warning or safety signs and not allowing the co-location of other uses on the system's tower, such as Wireless Communication Facility equipment or Mounted Antenna.
- Allow, if all conditions are met, for approval as a part of the building permit review process. Pursuant to Title 19.04.040 (B), conditions related to such things as the tower height limitations and setback provisions that are not met may be reviewed by the Planning Commission application of a Special Use Permit.

The following table summarizes all proposed changes:

<b>Code Requirements</b>	<b>Existing Regulations</b>	<b>Proposed Regulations</b>
Title 19.04.010 Land Use Tables – Small Wind Energy System	<ul style="list-style-type: none"> <li>• No allowance is made for the use in R-1 or any non-residential districts.</li> </ul>	<ul style="list-style-type: none"> <li>• The use is conditionally allowed in the R-1, P-R, O, C-1, C-2, C-PB, C-M, and M zoning districts.</li> </ul>
	<ul style="list-style-type: none"> <li>• Requires a minimum lot area of 2 acres.</li> </ul>	<ul style="list-style-type: none"> <li>• Requirement deleted.</li> </ul>
	<ul style="list-style-type: none"> <li>• A height of 90 feet for a parcel less than 2 net acres in size, or a height of 110 feet on a parcel of 5 net acres or more in size.</li> </ul>	<ul style="list-style-type: none"> <li>• A height of 50 feet for a parcel zoned R-D, R-1, and P-R; 90 feet for a parcel zoned R-A or R-E; and 90 feet for a parcel zoned O, C-1, C-2, C-PB, C-M, or M.</li> </ul>
	<ul style="list-style-type: none"> <li>• Different setbacks for different zoning districts.</li> </ul>	<ul style="list-style-type: none"> <li>• Establish a uniform setback for all districts where the use is conditionally permitted.</li> <li>• No part of a system may be closer to any structure than 10 feet.</li> </ul>
	<ul style="list-style-type: none"> <li>• Requires that the applicant supply evidence that they have notified the public utility.</li> </ul>	<ul style="list-style-type: none"> <li>• Requirement deleted.</li> </ul>
	<ul style="list-style-type: none"> <li>• Does not address potential signage.</li> </ul>	<ul style="list-style-type: none"> <li>• No signage is permitted on the system except the manufacturer label and any warning signs.</li> </ul>
	<ul style="list-style-type: none"> <li>• Does not address potential request to co-located other uses on the tower.</li> </ul>	<ul style="list-style-type: none"> <li>• No co-location of any other use is permitted on the system's tower.</li> </ul>

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	<ul style="list-style-type: none"><li>• Specifically prohibits the application of a Special Use Permit if all conditions can't be met.</li></ul>	<ul style="list-style-type: none"><li>• Requirement deleted.</li><li>• A limited number of conditions, such as height limit and setback limitations, can be adjusted via the Special Use Permit process if the conditions can't be met.</li></ul>
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**NOTICES MAILED**

NEWSPAPER ONLY

**APPROVALS**

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**PROTESTS**

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